IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL.

Criminal Appeal No. 327 of 2001

(Old No. 2920/1985)

1- Vinod Kumar Sharma S/o Gyan Chand,

2- Mohd. Salim S/o Nazir Hussain,

3- R.K. Pillai S/o Challapan Pillai,

At present R/o N.P.C.C. Dehradun,

District Uttarkashi ..Appellants.

Vs.

State of U.P. .. Respondent.

Sri Lokendra Dobhal, learned counsel for the appellants.

Sri H.C. Pujari, learned Addl. G.A. for the State.

Dated: November 15th, 2007

Hon'ble B.C. Kandpal, J.

This criminal appeal, under Section 374 of the Cr.P.C., has been preferred against the judgment and order dated 29-10-1985, passed by Sessions Judge, Uttarkashi, in S.T. No. No. 11 of 1983, S.T.No. 1 of 1985 and S.T. No. 3 of 1985, whereby the accused/appellants have been found guilty U/Ss 147 I.P.C., 323/149 I.P.C. and 325/149 I.P.C. and all of them have been sentenced to undergo R.I. for one year U/S 147 IPC, R.I. for six months U/S 323/149 I.P.C. and R.I. for four years U/S 325/149 I.P.C. The accused/appellant Vinod Kumar Sharma was further held guilty U/S 333 I.P.C. and was sentenced to undergo R.I. for four years. All the sentences were directed to run concurrently.

2- Brief facts giving rise to the present appeal are that Nirmal Chandra was Junior Specialist in N.P.C.C. at Dharasu in March 1983. On 3.3.1983 at

about 1.30 or 2.00 P.M. when he was going to attend his duty in the second shift along-with Gulam Ali, he was confronted by Rajendra Singh and Khem Singh who asked him to provide them employment. When Nirmal Chandra expressed his inability, they abused him. Both of them were soon joined by 15 or 20 other persons, including Vinod Kumar Sharma, R.K. Pillai, Bhuwneshwar Mistri, Mohammad Salim, A.C. Ramola and Bahadur Singh. All of them abused him and forcibly took him in the transport yard. Nirmal Chandra tried to take shelter in the office but the aforesaid persons dragged him outside. By that time Kishan Singh Bisht and Kendra Singh also reached there and tried to protect Nirmal Chandra . Vinod Kumar Sharma gave him a fist blow on his face befalling him and then he picked up an iron pipe and gave him a blow on left leg. Ganesh kumar Singh picked up a tyre rod and gave a blow on his left leg. Nirmal Chandra became unconscious and recovered consciousness only in the hospital. Thereafter he got a written report, Ext. Ka.4 scribed and also conveyed details of the occurrence to Unit Officer Sri Raj Gopalan as well as Rajendra Singh and others. Sri Raj Gopalan sent the written report to the Police Station along with covering letter. Ext. Ka.5 on 3.3.1983. The injured Nirmal Chandra was then taken to Uttarkashi hospital where medical examination and x-ray examination were made.

3- The injured Nirmal Chandra was medically examined by Dr. Ajeet Kumar Gairola, on 3.3.1983 at about 7.10 P.M. in District Hospital, Uttarkashi and prepared injury report (Ext. Dka.6). He found the following injuries on his person:-

1. Lacerated wound 3 cm x ¼ cm on outer part of forehead, right side.
2. Contusion 4cm x 2cm on right side of face just below the right side.
3. Contusion 2 ½ cm x 1 cm on right side of fore-head just below the hair line.
4. Contusion 3cm x 6cm on left side of face lower part.
5. Abrasion ½ cm on the back of left pinna.
6. Contusion 4cm x 2cm on left ear.
7. Traumatic swelling on right temporal region 4cm x 3cm.
8. Traumatic swelling 4cm x 5cm on left side of chest lower part 4cm above sub-costal margin.
9. Contusion on anterior aspect of left leg 11cm x 6cm and 13 cm above left medial malleolus.

4- The x-ray examination was made on 4.3.83 under the supervision of Dr. S.N. Gaur who prepared x-ray plates (Exts. 1 to 4) and a report (Ext. Ka.1) disclosing the fractures of 7th and 9th ribs and the fracture of left middle shaft of tibia and fibula.

5- The investigation was conducted by S.I. Bharat Singh Yadav, who interrogated the witnesses and prepared a site-plan of the place of occurrence (Ext. Ka.11). The I.O. recovered the tyre lever and iron pipe with which the assault was made and prepared Fard Recovery (Ext. Ka.12). After completion of investigation he submitted charge sheet, Ext. Ka.13, against the named accused persons. Further investigation was conducted by S.I. Geeta Ram

Sharma. Hirdai Ram, Rajendra Singh, Khem Singh, Girinandan Jha, Surendra Yadav, Satrughan Singh, Trilok Singh, Ramesh Singh and Ganesh Kumar were put up for identification. The identification parade was held by Sri R.S. Gupta, S.D.M. Dunda and the memo of identification (Ext. Ka.9) was prepared. Ramesh Kumar Singh was put up for identification separately and identification memo (Ext. Ka.3) was prepared. The I.O. submitted charge sheet, Ext. Ka.10 against some of the persons.

6- The C.J.M. Uttarkashi, committed the cases to the Court of Sessions for trial. The trial court consolidated the cases and decided all the three sessions trials by common judgment under appeal.

7- The accused/appellants Vinod Kumar Sharma, Mohamad Salim and R.K. Pillai along with other co-accused persons Amol Chand Ramola, Bahadur Singh, Bhuwaneshwar Mistri and Lal Singh were charged U/Ss 147, 307/149 I.P.C. The accused/appellant Vinod Kumar Sharma was further charged U/S 333 I.P.C. The accused persons pleaded not guilty and claimed their trial.

8- The prosecution in order to establish its case produced 8 witnesses. P.W.1, Dr. S.N. Gaur has prepared x-ray report. P.W.2 Sri R.S. Gupta, has conducted the identification parade, P.W.3 Nirmal Chandra and P.W.4 Gulam Nabi are the eye witness, P.W.5, Dr. Ajeet Kumar Gairola, had medically examined the victim, P.W.6 H.C. Jodh Singh has recorded the F.I.R. and made G.D. entry, P.W.7, S.I. Geeta Ram Sharma and P.W.8, S.I. Bharat Singh

Yadav have investigated the case and submitted charge sheets.

9- The accused persons in their statements U/s 313 Cr.P.C. have shown their ignorance about the incident. However, they have admitted the fact of holding identification parades but alleged that they had not been identified by the witnesses and in any case they knew them from before. No defence evidence was adduced.

10- The learned Sessions Judge, on hearing learned counsel for the parties and having gone through the evidence on record, found the accused/appellants Vinod Kumar Sharma, Mohd. Salim and R.K. Pillai guilty U/Ss 147 I.P.C., 323/149 I.P.C. and 325/149 I.P.C. and all of them have been sentenced to undergo R.I. for one year U/S 147 I.P.C., R.I. for six months U/S 323/149 I.P.C. and R.I. four years U/S 325/149 I.P.C. The accused/appellant Vinod Kumar Sharma was further held guilty U/S 333 I.P.C. and was sentenced to undergo R.I. for four years. All the sentences were directed to run concurrently. However, the other co-accused have been acquitted of the charges levelled against them.

11- Feeling aggrieved, the accused/appellants have preferred this appeal.

12- I have heard the learned counsel for the parties and have gone through the record.

13- The learned counsel for the appellants has submitted that along with the accused/appellants,

some other persons were tried together and the reasoning for acquittal of the co-accused applied to the remaining three as well, but the trial Judge on the same set of evidence has wrongly convicted the present accused/appellants. Therefore, the conviction of the appellants is liable to be set aside. In support of his contention learned counsel has cited before me the case of **Joginder Singh and others Vs. State of Punjab,** reported in **1994 Supreme Court Cases (Cri) 46.**

14- On the other hand learned Additional Government Advocate has opposed the submission raised by the defence counsel and urged that the evidence against the accused/appellants is consistent and fully corroborated by the eye witnesses whereas the evidence against the acquitted accused was not corroborated by both the eye witnesses produced in the case and in the identification parades as well. He also submitted that specific role against the accused/appellants have been assigned and their case is totally different to that of acquitted accused and the conviction of the appellants is justified.

15- In order to appraise the submissions raised by the learned counsel for the parties, it will be important to go through the evidence in the case. The prosecution has examined P.W.3, Nirmal Chandra and P.W.4 Gulam Nabi as eye-witnesses.

16- P.W.3, Nirmal Chandra is the victim in the case. He has deposed that on 3.3.83 he was going for his duty along with Gulam Nabi and as soon as he reached near transport yard, two persons

accosted him saying that employment should be provided to them also and abused him on his expressing inability. Those two persons were Rajendra Singh and Khem Singh. He further stated that Vinod Kumar Sharma, R.K. Pillai, Bhuvaneshwar Mistri, Mohd. Salim, A.C. Ramola and Bahadur Singh also joined those two persons along with some other unknown persons and belaboured him. He further alleged that Vinod Kumar Sharma gave him a fist blow befalling him and then gave a blow with an iron pipe on his left leg. He further identified Ganesh Kumar Singh before the Court saying that he had also given a blow by tyre lever on his left leg. Thereafter he became unconscious and regained consciousness only in the hospital. This witness also identified some other persons who participated in the occurrence.

17- The other eye witness Gulam Nabi P.W.4, has testified that he was going with Nirmal Chandra when this occurrence occurred. According to this witness Khem Singh and Rajendra Singh accosted Nirmal Chandra and abused him. He further deposed that R.K. Pillai, Ganesh Kumar Singh, Mohd. Salim and Ramesh Kumar Singh also joined them besides Vinod Kumar. He further deposed that Vinod Kumar Sharma gave a fist blow to Nirmal Chandra and also gave a blow on his leg with an iron pipe and Ganesh Kumar Singh gave a blow with tyre lever on that leg. This witness has named only 7 persons namely Vinod Kumar Sharma, Mohd. Salim, R.K. Pillai, Ramesh Kumar Singh, Rajendra Singh, Khem Singh and Ganesh Kumar Singh.

18- The identification parades had been held on two dates, i.e. on 23.3.84 and 4.6.84. As many as nine accused namely Hiridai Ram, Rajendra Singh, Surendra Singh, Shatrughan Singh, Trilok Singh, Ramesh Singh S/o Shyam Singh, Khem Singh, Girinandan Jhan and Ganesh Kumar Singh were put up for identification on 23.3.84 and memo Ext. Ka.2 was prepared. Ramesh Kumar S/o Maksudan was put for identification on 4.6.84 and identification memo, Ext. Ka.3 was prepared. In those parades only two witnesses namely Nirmal Chandra and Kishan Singh were called to identify the accused persons. Nirmal Chandra correctly identified Ramesh Kumar Singh, Hirdai Ram, Rajendra Singh, Ramesh Singh S/o Shyam Singh and Girinandan Jhan. Witness Kishan Singh correctly identified Ramesh Kumar Singh S/o Maksudan, Rajendra Singh, Shatrughan Singh, Trilok Singh, Ramesh Singh S/o Shyam Singh and Khem Singh.

19- The learned trial Judge has recorded a categorical finding that the identification parades were conducted after a long delay and no explanation for holding identification parades had been offered. Nirmal Chandra had identified all the persons named by him in the F.I.R. He also identified Bhuvaneshwar Mistri who participated in the occurrence but he was not named in the F.I.R. With regard to the role of Khem Singh and Rajendra Singh it has come in evidence that they initially accosted Nirmal Chandra with a request for providing employment to them but it was nowhere alleged that they took part in the assault or they had actually collected other accused persons to commit assault or had shared the main object of unlawful

assembly. These persons were extended the benefit of doubt. So far as the role of Ganesh Kumar Singh is concerned, he had been assigned the role to give a blow with a tyre rod to Nirmal Chandra but even Nirmal Chandra did not correctly identify him in jail. This witness Nirmal Chandra has deposed against Vinod Kumar Sharma, Mohd. Salim, R.K. Pillai, A.C. Ramola, Bahadur Singh and Bhuvneshwar Mistri. All these have been named in the F.I.R. Witness Gulam Nabi who was accompanying Nirmal Chandra at the time of occurrence, named Khem Singh, Rajendra Singh, R.K. Pillai, Ganesh Kumar Singh, Mohd. Salim, Ramesh Kumar Singh and Vinod Kumar Sharma. This witness has admitted that he had not named Khem Singh and Rajendra Singh before the I.O. The learned trial Judge has come to the conclusion that only three persons namely Vinod Kumar Sharma, Mohd. Salim and R.K. Pillai remained in the picture, they were named in the F.I.R. and were further named by Nirmal Chandra and witness Gulam Nabi. So far A.C. Ramola, Bahadur Singh and Bhuvaneshwar Mistri, are concerned, they were not named by Gulam Nabi nor there was any other evidence against these persons.

20- From perusal of evidence adduced in the case, it is established that the accused/appellants have been named in the F.I.R., they have been named by witnesses Nirmal Chandra P.W. 3 and Gulam nabi, P.W.4. These accused persons have been assigned with specific roles. It has come in evidence that victim Nirmal Chandra was assaulted in the course of his employment. He was forcibly taken in the transport yard. Nirmal Chandra tried to

take shelter in the office but he was dragged outside. Specific role has been assigned to accused/appellant Vinod Kumar Sharma that he gave a fist blow on the face of Nirmal Chandra befalling him and then he picked up an iron pipe and gave him a blow on left leg. The other two accused/appellants Mohd. Salim and R.K. Pillai have assigned the role of joining the unlawful assembly having common object along with accused/appellant Vinod Kumar Sharma and other persons.

21- I have also gone through the judgment rendered by the Hon'ble Apex Court in the above cited case and find that the facts of above cited case **Joginder Singh and others** (supra) are not applicable to the facts of the case in hand. In the cited case the Hon'ble Apex Court has found the evidence of eyewitnesses to be highly unsatisfactory whereas in the present case the evidence against the three accused/appellants is consistent and fully corroborated by the evidence of two eyewitnesses and other circumstances of the case. Their names also find place in the F.I.R. which has been lodged the same day of the occurrence without unreasonable delay.

22- So far as the medical evidence is concerned, the prosecution case fully finds support from it. Dr. Ajeet Gairola, P.W.5, has medically examined the injured Nirmal Chandra and found as many as 9 injuries in the shape of contusions, lacerated would, abrasion, and traumatic swelling. Contusion on anterior aspect of left leg fully supports the prosecution version about causing iron-pipe blow by accused/appellant Vinod Kumar Sharma.

Further Dr. S.N. Gaur, P.W.1, has prepared x-ray plates and x-ray report disclosing the fractures of 7th and 9th ribs and fracture of left middle shaft of tibia and fibula.

23- The learned Sessions Judge has recorded categorical finding while acquitting the co-accused persons and convicting and sentencing the accused/appellants. I do not find any infirmity in the reasoning given by the trial court.

24- For the discussion made above, I am of the firm view that the prosecution has been able to establish its case against the accused/appellants beyond any reasonable doubt and the appeal has no force and is liable to be dismissed.

25- The appeal is dismissed. The judgment and order dated 29-10-1985 passed by the trial court convicting and sentencing the accused/appellants is upheld.

25- The accused/appellants are on bail. Their bail bonds are cancelled and sureties discharged. They shall be taken into custody forthwith to serve out the sentence awarded against them.

26- Let the record be transmitted to the trial court concerned for compliance.

(B.C. Kandpal, J.)

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